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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,226	01/30/2004	Philip Frank Souter	CM2597	9632

27752 7590 05/06/2005

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EXAMINER

ANTHONY, JOSEPH DAVID

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/769,226

Applicant(s)

SOUTER ET AL.

Examiner

Joseph D. Anthony

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 23-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-22, drawn to a composition for purifying and clarifying contaminated drinking water, classified in class 252, subclass 186.33.
  - II. Claims 23-27, drawn to a method for purifying and clarifying contaminated drinking water, classified in class 210, subclass 756.
  - III. Claim 28, drawn to a kit for purifying and clarifying contaminated drinking water, classified in class 210, subclass 198.1+.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the composition as claimed can be used in a material different process such as in a method of bleaching textiles.
3. Inventions I and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product and the inventions are patentably distinct. In the instant case, the intermediate product is deemed to be useful as a composition to bleach textiles and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants.

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Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Inventions III and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used to bleach textiles in a washing composition.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Joan Cunningham on 04/28/05 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-22. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 23-28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Souter et al. WO 02/00557 A2 or Souter et al. U.S. Patent Number 6,827,874, both said references optionally in view of Williamson Jr. U.S. Patent Number 3,325,014

Both Souter et al references teach compositions, methods and kits for purifying and clarifying contaminated drinking water. The taught disinfecting compositions comprise: 1) a primary coagulant, 2) a bridging flocculants, 3) a coagulant aid, 4) a microbiocidal disinfectant, such as calcium hypochlorite, 5) water soluble alkali, 6) a water-insoluble silicate selected from clays, zeolites and

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mixtures thereof, 7) a food additive or nutrient source, and optionally 8) a moisture sink, see abstract, page 11, line 20 to page 12, line 27, the examples and the claims, such as claim 1. Both Souter et al. references thus directly disclose applicant's claimed components and claimed component species in all aspects, with the one exception that Souter et al does not directly disclose the **functional presence** of applicant's component (iii) which is an oxidant system providing catalytic or autocatalytic oxidation of soluble Mn(II) to MnO<sub>2</sub>.

It is held by the examiner that applicant's invention is obvious over either Souter et al references alone, since Souter et al's discloses species of primary coagulants that are deemed to also function as catalyst for the oxidation of soluble Mn(II) to MnO<sub>2</sub>. Examples of such primary coagulants which have this dual functionality are manganese sulfate, manganese chloride, copper sulfate and copper chloride etc.., see page 17, line 30 to page 19, line 14 of WO 02/00557 and column 11, line 50 to column 12 line 43 of 6,827,874. The oxidant used for these catalysts is deemed to be the microbiocidal chlorine-based disinfectant which is applicant's component (ii), see page 7, line 13 to page 8, line 2 of applicant's specification.

Williamson Jr. In the alternative It would thus have been obvious to one having ordinary skill in the art to use the disclosure of Williamson Jr. who clearly teaches that it is well known in the art of purifying water to use combinations of chlorine based disinfectant with potassium permanganate in a process of disinfecting and removal of removal of manganese by oxidation, see column 1,

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lines 7-42, column 3, lines 10-22, and column 5, lines 9-56 as strong motivation to actually incorporate potassium permanganate into the disinfecting compositions taught by both Souter et al. references as a means of removal of manganese by oxidation.

### ***Double Patenting***

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-12 and 14-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,827,874. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims encompass the pending claims, also see column 11, line 50 to column 12, line 43 of the patent.

13. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 25-33 of

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copending Application No. 10/371,864. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the co-pending applicant encompass the claims of the pending application in light of co-pending applicant's disclosure set forth in column 12, line 11 to column 14, line 14 and the examples in Tables 3-5 that include potassium permanganate.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Priority***

14. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in GB on 08/01/2001. It is noted, however, that applicant has not filed a certified copy of the GB application as required by 35 U.S.C. 119(b).

15. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in GB on 08/01/2001. A claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said application, since the United States application was filed more than twelve months thereafter.

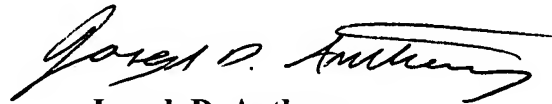
#### ***Prior-Art Cited But Not Applied***

16. Any prior-art reference which is cited on FORM PTO-892 but not applied, is cited only to show the general state of the prior-art at the time of applicant's invention.

#### ***Examiner Information***

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The centralized FAX machine number is (703) 872-9306. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.



**Joseph D. Anthony**  
**Primary Patent Examiner**  
**Art Unit 1714**

5/2/05